

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HILDA TORRES,

§

Plaintiff,

§

vs.

CASE NO. 3:14-cv-3606

SAFECO INSURANCE COMPANY
OF INDIANA,

§

Defendant.

§

**DEFENDANT SAFECO INSURANCE COMPANY OF INDIANA'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §1446(a) and Local Rule 81.1, Safeco Insurance Company of Indiana ("Safeco" or "Defendant") incorrectly served and sued as "Safeco" files this Notice of Removal, hereby removing this action from the 14th Judicial District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Hilda Torres ("Plaintiff") and Safeco and the amount in controversy exceeds \$75,000, exclusive of interest and costs. In support of its Notice of Removal, Defendant would respectfully show the Court as follows:

I.

INTRODUCTION

This dispute arises from Plaintiff's claim for wind and hail storm damage to her home located at 1702 Overpark Drive, Dallas, Texas 75217 (the "Property"). Plaintiff alleges that Defendant breached a policy of insurance, and violated certain provisions of the TEXAS INSURANCE CODE and TEXAS DECEPTIVE TRADE PRACTICES ACT ("DTPA")

by, among other things, failing to pay Plaintiff's claim for damages resulting from the storm.

On September 2, 2014, Plaintiff filed her Original Petition in the 14th Judicial District Court of Dallas County. Safeco was personally served with a citation and a copy of Plaintiff's Original Petition on September 12, 2014 through its registered agent for service of process. Defendant timely filed an answer to Plaintiff's Original Petition. This Notice of Removal is being filed within thirty (30) days of service of the Petition, and is thus timely filed under 28 U.S.C. §1446(b).

II.

BASIS FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

Removal is proper because there is complete diversity between the parties. See 28 U.S.C. § 1332(a). Plaintiff Hilda Torres is a citizen of Texas. See Plaintiff's Original Petition ¶II.1. Safeco Insurance Company of Indiana is a corporation organized under the laws of the State of Indiana, with its principal place of business in Boston, Massachusetts.

B. AMOUNT IN CONTROVERSY

1. Standards

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff's complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995). Where the plaintiff has not made a specific monetary demand the defendant has the burden to prove that the amount in controversy exceeds the jurisdictional amount of \$75,000. *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002); *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d

1250, 1253 (5th Cir. 1998); *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

A defendant can satisfy this requirement if “(1) it is apparent from the face of the petition that the claims are likely to exceed \$75,000, or, alternatively, (2) the defendant sets forth summary judgment type evidence of facts in controversy that support a finding of the requisite amount.” *Manguno*, 276 F.3d at 723 (internal quotations omitted). Where a defendant has met its burden, remand is proper only if the plaintiff can show that it is “legally certain that his recovery will not exceed” the jurisdictional amount. *In re 1994 Exxon Chemical Fire*, 558 F.3d 378, 387 (5th Cir. 2009).

2. Plaintiff’s Original Petition

Here, it is apparent from the face of Plaintiff’s Original Petition that his claims exceed \$75,000. In paragraph XIV of the petition Plaintiff states that “*the total damages sought by Plaintiff against Defendant for all elements of damage exceed the sum of 200,000, including exemplary and punitive damages, penalties, attorney’s fees, interests, and costs.*”

Plaintiff also seeks attorney’s fees under (1) section 38.001 of the TEXAS CIVIL PRACTICE & REMEDIES CODE (for its breach of contract action), see Plaintiff’s Original Petition, ¶XVII, and (2) sections 541.152 and 542.060 of the TEXAS INSURANCE CODE. *See* Petition, ¶ XVII. If a state statute provides for attorney’s fees, such fees are included as part of the amount in controversy. *Foret v. Southern Farm Bureau Life Ins. Co.*, 918 F.2d 534, 537 (5th Cir. 1990); see also 14A C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE § 3712, at 176 (2d ed. 1985).

Removal of this action is therefore proper under 28 U.S.C. § 1441(a), since it is a civil action brought in state court, this Court has original jurisdiction over the subject

matter pursuant to 28 U.S.C. § 1332(a), Plaintiff's citizenship is diverse from Defendant's citizenship, and the amount in controversy exceeds \$75,000.

III.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

As required by Local Rule 8.1(a), filed concurrently with this Notice of Removal is a completed civil cover sheet, supplemental civil case cover sheet and a signed Certificate of Interested Persons that complies with LR 3.1(c). Additionally, the following exhibits are attached:

- **EXHIBIT A:** Index of all documents filed in state court;
- **EXHIBIT B:** A copy of the docket sheet in the state court action;
- **EXHIBIT C:** A copy of each document filed in the state court action.

IV.

CONCLUSION AND PRAYER

Based on the foregoing, Defendant Safeco Insurance Company of Indiana respectfully requests that the above-captioned action now pending in the District Court, 14th Judicial District, Dallas County, Texas be removed to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully submitted,

/s/ Mak D. Tillman

MARK D. TILLMAN
State Bar No. 00794742
COLIN BATCHELOR
State Bar No. 24043545
MICHAEL C. DIKSA
State Bar No. 24012531

TILLMAN BATCHELOR LLP
1320 Greenway Drive, Suite 830

Irving, Texas 75038
Telephone: (214) 492-5720
Facsimile: (214) 492-5721
Email: mark.tillman@tb-llp.com
colin.batchelor@tb-llp.com
mike.diksa@tb-llp.com

**ATTORNEYS FOR DEFENDANT
SAFECO INSURANCE COMPANY OF
INDIANA**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendant's Notice of Removal has been forwarded to Plaintiff's counsel of record via electronic means and/or facsimile, on the 6th day of October 2014 in accordance with the Federal Rules Of Civil Procedure.

Marcos P. Martinez
SBN 24087984
MARTINEZ HSU, P.C.
1601 E. Lamar Blvd. Suite 114
Arlington, Texas 76011
Telephone: (682) 514-9455
Facsimile: (682) 730-8998
E-mail: marcpmartinez@mhlegalgroup.com

/s/ MARK D. TILLMAN
MARK D. TILLMAN